

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 14, 2003

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION,
Applicant,

v.

CASE NO. INS-2003-00024

RECIPROCAL OF AMERICA and
THE RECIPROCAL GROUP,
Respondents.

ORDER REQUIRING FILING OF ADDITIONAL INFORMATION

On April 30, 2003, the Deputy Receiver of Reciprocal of America and The Reciprocal Group (collectively, "ROA") filed with the State Corporation Commission ("Commission"), his Application for Orders Setting Hearing on Liquidation of Reciprocal of America and The Reciprocal Group, Establishing Response Dates, Ordering Liquidation, Approving Claims Bar Dates, and Related Matters ("Application"), seeking that the Commission enter orders:

(1) setting a hearing on the proposed liquidation of ROA and certain related matters (the "Liquidation Hearing") and a further hearing on other relief sought therein by the Deputy Receiver and on any other matters raised by the Deputy Receiver in relation to the Application (the "Second Hearing"); (2) establishing response dates for those persons wishing to oppose the Application; (3) approving notice procedures for the hearing; (4) after the Liquidation Hearing, declaring ROA to be insolvent, entering an Order of Liquidation, permitting the payment of certain workers' compensation benefits, and authorizing the cancellation of ROA's direct insurance policies; and (5) after the Second Hearing, approving the proposed claims bar dates and notice procedures related thereto, and all related matters for the Liquidation as described in the Application.

On May 2, 2003, the Commission entered an Order Setting Hearing on Liquidation of Reciprocal of America and The Reciprocal Group, Establishing Response Date, and Related Matters ("Scheduling Order"). Therein, *inter alia*, the Commission scheduled the ROA Liquidation Hearing to commence on June 19, 2003. The ROA Liquidation Hearing was scheduled to consider (i) the Deputy Receiver of ROA's request for a finding of insolvency; (ii) whether an Order of Liquidation of ROA should be entered; (iii) whether the Deputy Receiver should be permitted to cancel ROA direct insurance policies; and (iv) whether the Deputy Receiver should be permitted to continue paying certain ROA worker's compensation insurance policy benefits. The Scheduling Order further required any party opposed to certain matters raised in the Application to provide the Commission, the Deputy Receiver of ROA, and counsel for the Deputy Receiver of ROA, notice of such opposition, with a full statement as to the basis therefor, a list of anticipated witnesses, the substance of the anticipated testimony, and a list of exhibits to be offered in support of the opposition.

On May 6, 2003, the Special Deputy Receivers ("SDR") for Doctors Insurance Reciprocal, Risk Retention Group ("DIR" and "RRG"), American National Lawyers Insurance Reciprocal, RRG ("ANLIR"), and The Reciprocal Alliance, RRG ("TRA") filed Objections to Proposed Hearing Procedures Requested in the Deputy Receiver's Application for Orders Setting Hearing on Liquidation of Reciprocal of America and The Reciprocal Group, Establishing Response Dates, Ordering Liquidation, Approving Claims Bar Dates, and Related Matters ("Objections"). Therein, the SDRs object to certain procedural requests made in the Application and request that the Scheduling Order be modified in accordance with the Objections.

The SDRs assert that the Deputy Receiver of ROA should be required to submit additional support for the Application prior to each hearing. Otherwise, the SDRs assert, "potential respondents are in the extremely difficult—if not impossible—situation of attempting to guess the precise factual basis and evidentiary support for the relief sought by the ROA/TRG

Deputy Receiver, other than the 2002 Annual Financial Statement."¹ Next, the SDRs raise concerns regarding § 38.2-1512 of the Code of Virginia. The SDRs assert the possibility of irreparable harm if their contentions that ROA and DIR, ANLIR, and TRA are a "single insurance business enterprise"² are not decided before their rights are "fixed" as provided in § 38.2-1512 of the Code of Virginia. Third, the SDRs complain about their lack of access to books and records under the control of ROA. Fourth, the SDRs assert the need for further specificity as to what worker's compensation benefits will continue to be paid. The SDRs note that "the category of [worker's compensation benefits] as set forth in the Application seems to be quite broad, and encompasses 'medical' claims as well as 'partial and total disability' claims—i.e., potentially, claims to pay physicians and other healthcare professionals or facilities, such as hospitals, for services rendered."³ Finally, the SDRs request that the Claims Bar Dates, as addressed in the Application, be considered by the Commission at the Liquidation Hearing.

On May 13, 2003, the Deputy Receiver of ROA filed his Response of Deputy Receiver to Objections to Hearing Procedures ("Response"). Therein, the Deputy Receiver of ROA challenges many of the assertions made by the SDRs in the Objections. The Deputy Receiver of ROA claims that the Objections "add nothing to this proceeding, save to compel a further expenditure of scarce resources by the Deputy Receiver of ROA and TRG."⁴ The Deputy Receiver also asserts that if the SDRs "propose to challenge the request for an order of

¹ Objections at 4.

² This is one of the issues to be decided, *inter alia*, in *In Re: Joint Petition of Special Deputy Receivers of Doctors Insurance Reciprocal, RRG, In Receivership, American National Lawyers Insurance Reciprocal, RRG, In Receivership, and The Reciprocal Alliance, RRG, In Receivership*, Case No. INS-2003-00092. The Deputy Receiver is required to respond to all of the issues raised in the Joint Petition in that case by May 16, 2003.

³ Objections at 5.

⁴ Response at 10.

liquidation, they are more than adequately informed as to the legal and factual basis of the Deputy Receiver's request for such an order: ROA's insolvency."⁵

We have considered the issues raised by the SDRs in the Objections, as well as the Response thereto. The fact that an insurance company is insolvent does not lead to the inevitable conclusion that further efforts at rehabilitation are useless.⁶ We agree that the Deputy Receiver of ROA should make a more detailed statement of his position and the bases therefor on the issues to be addressed at the Liquidation Hearing available prior to the Liquidation Hearing.⁷ The SDRs will be able to continue to litigate the impact of § 38.2-1512 of the Code of Virginia on them during the pendency of this case. The SDRs will also be able to continue to challenge the applicability and appropriateness of the Bar Dates being applied to them. Hence, we see no reason to amend the Scheduling Order to permit the SDRs to continue to litigate issues that we have not precluded them from raising.⁸

Accordingly, IT IS ORDERED THAT:

(1) The Deputy Receiver shall file with the Clerk of the Commission a detailed statement of his position and the basis therefor, a list of anticipated witnesses, the substance of the anticipated testimony, and a list of exhibits that will be offered at the Liquidation Hearing, on or before May 27, 2003; and

(2) This matter is continued.

⁵ Id. at 11.

⁶ See, §§ 38.2-1503 of the Code of Virginia (grounds for the Commission commencing a delinquency proceeding against an insurer) and 38.2-1519 of the Code of Virginia (providing for when liquidation may be entered).

⁷ We expect this detailed statement to include, *inter alia*, what worker's compensation insurance benefits should continue to be paid and the reasons therefor. The Response provides greater detail about the extent to which the Deputy Receiver of ROA seeks to continue the payment of certain worker's compensation insurance benefits of ROA. Response at 13-15. If this additional statement provides the entire basis for the Deputy Receiver's request to continue such payments, then it can be included in the information required to be filed by this Order.

⁸ While the SDRs seek a similar pre-filed statement from the Deputy Receiver prior to the Second Hearing, we need not address that request at this time.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Deputy Receiver Alfred W. Gross, 4200 Innslake Drive, Glen Allen, Virginia 23060; Peter B. Smith, Senior Counsel, Office of General Counsel, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, Virginia 23218; Patrick H. Cantilo, Esquire, Mark F. Bennett, Esquire, Pierre J. Riou, Esquire, Cantilo & Bennett, L.L.P., 7501 C North Capital of Texas Highway, Suite 200, Austin, Texas 78731; H. Lane Kneedler, Esquire, Walter A. Marston, Jr., Esquire, Curtis G. Manchester, Esquire, Kevin R. McNally, Esquire, ReedSmith LLP, Riverfront Plaza—West Tower, 901 East Byrd Street, Suite 1700, Richmond, Virginia 23219-4069; J. Graham Matherne, Esquire, William Gibson, Esquire, Wyatt, Tarrant & Combs, LLP, 2525 West End Avenue, Suite 1500, Nashville, Tennessee 37203-1423; Kathryn A. Stephenson, Esquire, Paul W. Ambrosius, Esquire, Trauger, Ney & Tuke, The Southern Turf Building, 222 Fourth Avenue North, Nashville, Tennessee 37219-2117; and Leslie F. Shechter, Esquire, J.W. Luna, Esquire, Farmer & Luna, PLLC, 333 Union Street, Suite 300, Nashville, Tennessee 37201.